

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

JAN 12 2015

OFFICE OF
MANAGING DIRECTOR

Daniel A. Kirkpatrick, Esq.
Fletcher, Heald & Hildreth
1300 North 17th Street, 11th Floor
Arlington, Virginia 22209

Applicant/Licensee: **Communicom
Broadcasting LLC and Communicom
Corp of America, LLC**
Waiver and Petition for Deferral: Financial
Hardship
Disposition: **Denied** (47 C.F.R. §§ 1.1166)
Station(s): WDRJ(AM), WLNO(AM),
WLF942, KXXT(AM), WPJC868,
KXEG(AM), WMF982
FRN: 0016666885, 0001605864,
0001605864, 0014148233, 001418241
Fee: Fiscal Year (FY) 2014 Regulatory Fee
Filed: Sep. 9, 2014
Fee Control No.: RROG-14-00015718
Amount Due: See Fee Filer

Dear Counsel:

This letter responds to Licensees' *Request*¹ for a waiver and deferral of the unpaid Fiscal Year (FY) 2014 regulatory fees on the grounds of financial hardship.² As we discuss below, we deny because Licensees fail to meet their burden of establishing both

¹ Letter from Daniel A. Kirkpatrick, Esq., Fletcher, Heald & Hildreth, 1300 North 17th St., 11th Floor, Arlington, VA 22209 to Marlene Dortch, Secretary, FCC, Attn: Office of Managing Director, Regulatory Fee Waiver /Reduction Request, 445 12th St., SW, Room TW-B204, Washington, DC 20554 (filed Sep. 9, 2014) (*Request*) with Exhibit A, Communicom Corp. of America, LLC, *et al*, U.S. Bankruptcy Court, District of Colorado, (Case No. 13-12694-MER, *et al.*), *Notice of Joint Administration* (Mar. 6, 2013) (page 1), Communicom Corp. of America, LLC, *et al*, U.S. Bankruptcy Court, District of Colorado, (Case No. 13-12694-MER, *et al.*), *Order Granting Motions for Joint Administration* (Pages 1-3) (*Order For Joint Administration*), Communicom Corp. of America, LLC, *et al*, U.S. Bankruptcy Court, District of Colorado, (Case No. 13-12694-MER, *et al.*), *Stipulated Order Authorizing the Appointment of Robert J. Maccini of Media Services Group as Chief Transition Officer for the Debtors* (Jun. 11, 2014) (*Stipulated Order*). In this letter, the term, *Licensee* or *Licensees* includes the entities named in the *Request*, *i.e.*, Communicom Co. of Michigan, L.P., Communicom Co. of Louisiana, L.P., Communicom Co. of Arizona, L.P., and Communicom Co. of Phoenix, L.P.

² 47 C.F.R. § 1.1166(c) (Petitions for waiver of a regulatory fee must be accompanied by the required fee and FCC Form 159. Submitted fees will be returned if a waiver is granted. Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment to financial hardship, supported by documentation of the financial hardship.).

financial hardship and extraordinary and compelling circumstances that outweigh the public interest in recouping the Commission's regulatory costs.³

Background

Licensees request the Commission waive each Licensee's obligation to pay regulatory fees due September 23, 2014, on the ground they are "currently undergoing Chapter 11 reorganizations."⁴ Specifically, the fees include three \$10-fees and four fees of \$7,800, \$6,500, \$5,400, and \$4,225, respectively. Licensees assert the *Request* complies with the Commission's standard, specifically that the "waiver request and petition for deferral is submitted pursuant to the Commission's determination in Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5345-46 (1994), *recon. granted*, 10 FCC Rcd 12759 (1995), that it 'will waive the regulatory fees for licensee whose stations are bankrupt, undergoing Chapter 11 reorganizations or in receivership.' [Licensees] are currently undergoing Chapter 11 reorganizations as demonstrated by the Order of the United States Bankruptcy Court ... attached hereto as Exhibit A."⁵ Exhibit A is a page from the *Notice of Joint Administration*, a copy of a portion of the *Order for Joint Administration*, and the *Stipulated Order*.⁶

The Standard

In establishing a regulatory fee program, the Commission recognized that in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee, and it may be waived, reduced, or deferred upon a showing of good cause and a finding that the public interest will be served thereby.⁷ The Commission has narrowly interpreted its waiver authority to require a showing of extraordinary and compelling circumstances that outweigh the public interest in recouping the

³ Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, 9 FCC Rcd 5333, 5344, ¶ 29 (1994), *recon. granted in part*, 10 FCC Rcd 12759 (1995); Phoenix Broadcasting, Inc. Stations KSWD and KPFN Seward, Alaska, *Memorandum Opinion and Order*, 18 FCC Rcd 26464, 26446, ¶¶ 5-6 (2003) ("Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public. . . . [I]n the absence of a documented showing of insufficient funds to pay the regulatory fees, [applicant] has not made a compelling showing that overrides the public interest in the Commission's recouping the costs of its regulatory activities.").

⁴ *Request* at 2.

⁵ *Id.*

⁶ *Request*, Exhibit A.

⁷ 47 U.S.C. §159(d); 47 C.F.R. § 1.1166. *See also* 9 FCC Rcd at 5344.

Commission's regulatory costs.⁸ Fee relief may be granted based on a "sufficient showing of financial hardship."⁹

In such matters, however, "[m]ere allegations or documentation of financial loss, standing alone," do not suffice and "it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."¹⁰ Indeed, the regulatee-applicant has a duty to clarify its position with the Commission¹¹ and to maintain the accuracy and completeness of its application.¹² Thus, in order to establish a basis for waiver predicated on financial need, the regulatee must provide financial documents including, e.g., a licensee's balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. On this information, the Commission considers on a case-by-case basis whether the licensee met the standard to show the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.¹³

We consider a licensee's verified bankruptcy to be a relevant fact;¹⁴ however, "in some circumstances a significant question may exist as to whether bankruptcy represents extraordinary and compelling circumstances justifying a waiver when balanced against the public interest in reimbursing the Commission for its costs as reflected in the statutory fee provisions."¹⁵ Indeed, the primacy of the standard¹⁶ remains, the applicant must

⁸ 9 FCC Rcd at 5344 ¶ 29; Phoenix Broadcasting, Inc. Stations KSWD and KPFN Seward, Alaska, *Memorandum Opinion and Order*, 18 FCC Rcd At 26446, ¶¶ 5-6 ("Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public. ... [I]n the absence of a documented showing of insufficient funds to pay the regulatory fees, [applicant] has not made a compelling showing that overrides the public interest in the Commission's recouping the costs of its regulatory activities.").

⁹ Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Memorandum Opinion and Order*, 10 FCC Rcd 12759, 12761-62, ¶ 13 (1995) (FY 1994 MO&O).

¹⁰ *Id.*

¹¹ *Bartholdi Cable Co. Inc. v FCC*, 114 F3d 274, 280 (DC Cir. 1997) (The Commission "'need not sift pleadings and documents' to identify arguments that are not 'stated with clarity' by a petitioner. It is the petitioner that has the burden of clarifying its petition before the agency.").

¹² 47 C.F.R. § 1.65 ("Each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application ... whenever the information furnished ... is no longer substantially accurate and complete in all significant respects, the applicant shall as promptly as possible and in any event within 30 days, unless good cause is shown, amend or request the amendment of the application so as to furnish such additional or corrected information as may be appropriate.").

¹³ *Id.*

¹⁴ See *Id.* at 12762, ¶ 14 ("[W]here a bankruptcy trustee, receiver, or debtor in possession is negotiating a possible transfer of a license, the regulatory fee could act as an impediment to the negotiations and the transfer of the station to a new licensee.").

¹⁵ Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Notice of Proposed Rulemaking*, 18 FCC Rcd 6085, 6090, ¶ 11 (2003) ("Although fee waivers will generally be given in cases of financial hardship, we nevertheless note that even under our current policies, in some circumstances a significant question may exist as to whether bankruptcy represents extraordinary and compelling circumstances justifying a waiver when balanced against the public interest in reimbursing the Commission for its costs as

present “extraordinary and compelling circumstances showing that a waiver ... would override the public interest” in collecting the fee.¹⁷ Thus, we analyze the facts of each case to determine whether the applicant has satisfied both prongs of the Commission’s standard, financial hardship and extraordinary¹⁸ and compelling circumstances¹⁹ showing waiver is justified.²⁰

A bankruptcy proceeding is established with verified court records, such as, in a reorganization under Chapter 11 of the Bankruptcy Code, copies of the relevant filings, forms, and evidence the trustee or debtor-in-possession has complied with its required duties²¹ by including court filed financial reports.²²

Discussion

The debtor-in-possession is a fiduciary of the estate, exercising powers for the benefit of the creditors,²³ including keeping all creditors informed of the status of the business undergoing reorganization through the use of pervasive reporting.²⁴ Required court filings maintain the expected degree of disclosure and transparency in both the bankruptcy proceeding²⁵ and in a waiver request before the Commission. Moreover, these required court filings show how the debtor-in-possession continues to operate in the normal course of business,²⁶ including paying from current revenues postpetition expenses, such as the Commission’s annual regulatory fees.

In contrast to what is required by the court, and that Licensees presumably filed in response, here, Licensees provide only some information that the court granted joint administration and that the court appointed a chief transition officer.²⁷ That submission is incomplete and it lacks context. For example, Licensees fail to include basic relevant court records, *e.g.*, the petition, evidence of authorization to file, and initial forms and schedules and, relevant to the issue of financial hardship and inability to pay the annual regulatory fees, financial information pertaining to the debtor-in-possession and each

reflected in the statutory fee provisions. ... We therefore emphasize that under the statutory waiver provisions, case-by-case review of fee waiver requests is necessary to determine the public interest, even in bankruptcy cases.”).

¹⁶ 47 U.S.C. § 159(d) (“The Commission may waive, reduce, or defer payment of a fee in any specific instance for good cause shown, where such action would promote the public interest.”); 47 C.F.R. § 1.1166 (“fee ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest.”).

¹⁷ *FY 1994 MO&O*, 10 FCC Rcd at 12761, ¶ 12.

¹⁸ *Black’s Law Dictionary* (9th ed. 2009)(extraordinary-“a highly unusual set of facts that are not commonly associated with a particular thing or event”).

¹⁹ *Id.* (compelling-“something so great that irreparable harm or injustice would result if not met”).

²⁰ *Assessment and Collection of Regulatory Fees for Fiscal Year 2003, Report and Order*, 18 FCC Rcd 15985, 15989-90, ¶¶ 11, 13, 14 (2003).

²¹ *See* 11 U.S.C. § 521.

²² 11 U.S.C. §§ 1106, 1107, 1166; Fed. R. Bankr. P., Rule 1007.

²³ *Modern Office Supply, Inc.*, 28 B.R. 943, 944 (W.D. Ok., Bankr. 1983).

²⁴ *Id.*

²⁵ *Visicon Shareholders Trust*, 478 B.R. 292, 311 (S.D. Oh, Bankr. 2012).

²⁶ *Matt v. HSBC Bank, USA*, 968 F.Supp. 2d 351, 359 (D.Ma. 2013).

²⁷ *Request*, Exhibit A.

specific Licensee. In that regard, to provide further examples, and not to exclude other relevant financial information, Licensees should furnish copies of (a) statutorily required lists, schedules, and statements,²⁸ (b) reports required by bankruptcy court rules,²⁹ (c) current cash flow statements and operating reports for each Licensee, (d) reports of current, post-bankruptcy filing liabilities, (e) reports of post-petition credit (with or without judicial review) (secured and unsecured), (f) reports or statements showing the disposition of current liabilities, (g) relevant court orders, (h) draft and final plans for reorganization, and (i) present and future offers to purchase any or all of Licensees assets.³⁰ This information is the essence of the bankruptcy proceeding that Licensees should present to show whether the debtor-in-possession is experiencing financial hardship, and to resolve questions whether bankruptcy presents extraordinary and compelling circumstances justifying a waiver. The information is readily available. Indeed, it is required to be filed with the petition or in response to the court's orders. In contrast to that required evidence of bankruptcy, Licensees' submission excludes any financial documentation, instead offering only a mere unverified assertion. As such, Licensees fail to establish a basis on which to determine under the law³¹ whether Licensees established good cause and that the deferral and waiver would promote the public interest. Specific to the debtor-in-possession, Licensees fail to show either to defer payment or to waive the fee, "the impact of the regulatory fee [on the Licensees'] ability to serve the public,"³² and to show how the public interest will be served by waiving the fees.

We will not speculate about the substance of the information that might fill in the gaps that result from Licensees failing in their duty to clarify their position with the Commission³³ and to maintain the accuracy and completeness of their application.³⁴

Accordingly, because Licensees fail to establish that the "bankruptcy represents extraordinary and compelling circumstances justifying a waiver when balanced against the public interest in reimbursing the Commission for its costs as reflected in the statutory fee provisions,"³⁵ we deny the *Request*.

²⁸ *Id.*

²⁹ See Fed.R.Bankr.P., Rule 2015.

³⁰ The *Stipulated Order* refers to, but fails to include the "Order Approving Bidding and Notice of Procedures for Sale and Substantially All of Debtors' Assets and Business Free and Clear of All Liens, Claims Interests, and Encumbrances," or other relevant documents or filings.

³¹ 47 U.S.C. § 159(d) ("good cause shown, where such action would promote the public interest."); 47 C.F.R. § 1.1166 ("good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest.").

³² FY 1994 MO&O, 10 FCC Rcd at 12762, ¶ 13.


³³ *Bartholdi Cable Co. Inc. v FCC*, 114 F3d 274, 280 (DC Cir. 1997) (The Commission "'need not sift pleadings and documents' to identify arguments that are not 'stated with clarity' by a petitioner. It is the petitioner that has the burden of clarifying its petition before the agency.").

³⁴ 47 C.F.R. § 1.65 ("Each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application ... whenever the information furnished ... is no longer substantially accurate and complete in all significant respects, the applicant shall as promptly as possible and in any event within 30 days, unless good cause is shown, amend or request the amendment of the application so as to furnish such additional or corrected information as may be appropriate.).

³⁵ 18 FCC Rcd at 6090, ¶ 11.

Payment of the FY 2014 regulatory fee is now due. The regulatory fee must be filed together with a Form FCC 159³⁶ within 30 days from the date of this letter. If Licensee fails to pay the full amount due by that date, the statutory penalty of 25% of the unpaid fee,³⁷ and interest and applicable additional penalties required by 31 U.S.C. § 3717 will accrue from the date of this letter. The debt will become delinquent, and under the law,³⁸ the Commission will initiate collection proceedings and impose other administrative sanctions.³⁹ If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,


For: Mark Stephens
Chief Financial Officer

³⁶ You may find the Form 159 with complete instructions at: <http://www.fcc.gov/fees/form159.html>.

³⁷ 47 U.S.C. § 159(c)(1). See 9 FCC Rcd at 5346, ¶ 35 ("the petitioner will have 30 days to [pay the fee] in order to avoid the assessment of penalty charges and the invocation of any other available remedy. The filing of a petition for reconsideration will not toll this 30-day period.").

³⁸ See 47 C.F.R. § 1.1901, *et seq.*

³⁹ See 47 C.F.R. § 1.1910(b)(2) ("Action will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination, or request for authorization by any entity found to be delinquent in its debt to the Commission"); 47 C.F.R. § 1.1164(e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment.").

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAR 09 2015

OFFICE OF
MANAGING DIRECTOR

Charles Lunsford
Director, Revenue & Regulatory Affairs
Community Long Distance, Inc., d/b/a Comporium
330 East Black Street
Post Office Box 470
Rock Hill, SC 29731

Licensee/Applicant: **Community Long Distance,
Inc., d/b/a Comporium**
Waiver and Refund Request: Late Payment Penalty
Disposition: **Denied** (47 C.F.R. §§ 1.1157(c)(1),
1.1164)
Fee: Fiscal Year (FY) 2014 Regulatory Fee Late
Fees
Station: N/A
Date Request Filed: Dec. 8, 2014
Date Regulatory Fee Paid: Oct. 22, 2014
Date Late Penalty Fee Paid: Oct. 22, 2014
Fee Control No.: RROG-14-00015846

Dear Mr. Lunsford:

This responds to Licensee's *Request*¹ for waiver and refund of the penalty for late payment of the Fiscal Year (FY) 2014 regulatory fee on the grounds its servicing bank erred in failing to process a payment. As we discuss below, we deny because Licensee's described circumstance is not bank error, rather the event of the untimely payment of its regulatory fee was the direct result of Licensee's failure to update filters it left in place with its bank, which prevented processing of the transaction.

¹ Letter from Charles Lunsford, Community Long Distance, d/b/a Comporium, 330 East Black Street, PO Box 470, Rock Hill, SC 29731 to Marlene Dortch, Secretary, FCC, Attn: Office of the Managing Director, 445 12th St., S.W., Room TW-B204, Washington, DC 20554 (Nov. 26, 2014) (rec'd Dec. 8, 2014) (*Request*) with three attachments: (a) letter from Michael Glenn, Treasury Management Officer, TD Bank, NA, 1501 Main St., Columbia, SC 29201 (Oct. 31, 2014) (*TD Bank Letter*), (b) Pay.gov Payment Confirmation Remittance Advice.txt, From paygovadmin@mail.doc.twai.gov (Sep. 12, 2014), and (c) FCC, Financial Operations Administration, Client History (Oct. 29, 2014).

Background

On December 8, 2014, Licensee filed² its *Request* for a “refund [of] the late payment penalty of \$4,712.50 ... due to bank error.”³ Licensee asserts it “attempted ... to make payment of [the required annual regulatory fee] on September 12, 2014. ... an issue with [Licensee’s] ACH fraud protection and lack of notification from [Licensee’s bank,] TD Bank prevented [Licensee] from being made aware that ... payment was returned [before] the payment deadline of September 23, 2014.”⁴ Furthermore, Licensee asserts, when it “initiated payment ... TD Bank assumed [Licensee] was originating the payment ... therefore the ACH filter [at TD Bank] did not need updating. [Thereafter,] TD Bank failed to notify [Licensee] of the returned payment [within time for Licensee to correct the filter] prior to the fee payment deadline”⁵ TD Bank explained that Licensee’s “payment was returned due to a fraud prevention service that [Licensee] has in place to help safeguard their accounts from unauthorized electronic debits. This ... service ... prohibits entities from electronically debiting [Licensee’s] accounts, unless the originating debtor’s ACH Company ID has been provided to the bank by our customer ... had the ACH filter services not been in place, the payment would have been posted”⁶

Standards

Under 47 U.S.C. § 159 and the Commission’s rules, we are required to “assess and collect regulatory fees” to recover the costs of the Commission’s regulatory activities,⁷ and when the required payment is received late or it is incomplete, to assess a penalty equal to “25 percent of the amount of the fee which was not paid in a timely manner.”⁸ Specifically, “[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... which was not paid in a timely manner.”⁹ Bank error, established with “an affidavit of an officer of the bank,”¹⁰ must involve circumstances entirely outside the regulatee’s ability to control that caused the untimely payment of regulatory fee.¹¹

Each year, the Commission establishes the final day on which payment must be received before it is considered late, *i.e.*, a deadline after which the Commission must assess charges that include the statutory late payment penalty required by 47 U.S.C. § 159(c)(1) and 47 C.F.R. §§ 1.1157(c)(1) and 1.1164, and additional charges of interest, penalties, and charges of collection required by 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940.

² Licensee’s *Request* was filed on the date it was received at the Commission’s office. See 47 C.F.R. §§ 1.7, 0.401.

³ *Request*.

⁴ *Id.*

⁵ *Id.*

⁶ *TD Bank Letter*.

⁷ 47 U.S.C. § 159(a)(1); 47 C.F.R. § 1.1151.

⁸ 47 U.S.C. § 159(c)(1); 47 C.F.R. §§ 1.1157(c)(1), 1.1164.

⁹ 47 C.F.R. § 1.1164.

¹⁰ 47 C.F.R. § 1.1164(b).

¹¹ *NTT America, Inc., Memorandum Opinion and Order*, 21 FCC Rcd 8088, 8090, ¶ 6 (2006) (*NTT America*).

Discussion

For FY 2014, the deadline for paying regulatory fees was September 23, 2014.¹² We did not receive Licensee's regulatory fee payment for FY 2014 until October 22, 2014. After making payment, Licensee asked for a waiver and refund of the statutory penalty and charges.

Under 47 U.S.C. § 159(c)(1) and 47 C.F.R. § 1.1164, the Commission assesses a late payment penalty of 25 percent on any regulatory fee not paid in a timely manner, which is not excused by bank error. A timely payment is one received at the Commission's lockbox bank by the due date, and "bank error" is where "a fee payment fails due to error by the payor's bank, as evidenced by an affidavit of an officer of the bank."¹³

"Bank errors that cause untimely payment of regulatory fees involve circumstances entirely outside the regulatee's ability to control."¹⁴ In contrast to this standard, Licensee asserts, "TD Bank assumed that [because Licensee] was originating the payment ... the ACH filter did not need updating [by Licensee]."¹⁵ Further, Licensee asserts, "TD Bank failed to notify [Licensee] of the returned payment which prevented a correction prior to the fee payment deadline"¹⁶ Moreover, the *TD Bank Letter* restates "the payment was returned ... due to a fraud prevention service that [Licensee] has in place ... had the ACH filter services not been in place, the payment would have posted."¹⁷ This explanation fails to establish that the circumstances causing the untimely payment were "entirely outside [Licensee's] ability to control."¹⁸ Indeed, as Licensee describes, its untimely payment of the regulatory fee was the result of Licensee failing to change the filters in place at TD Bank; a matter entirely within Licensee's control, and the consequence of its own business decision.¹⁹ Finally, Licensee's *TD Bank Letter* is not an affidavit as our rule requires.²⁰ Overall, Licensee's explanation does not establish extraordinary circumstances to justify a waiver of the late payment penalty.²¹ Thus, the *Request* is denied.

¹² See FY 2014 Regulatory Fees Due No Later Than September 23, 2014, 11:59 pm Eastern Time (ET), *Public Notice*, DA 14-1261 (Aug. 29, 2014).

¹³ 47 C.F.R. § 1.1164(b).

¹⁴ *NTT America*, 21 FCC Rcd at 8090, ¶ 6.

¹⁵ *Request*.

¹⁶ *Id.*

¹⁷ *TD Bank Letter*.

¹⁸ *NTT America*, 21 FCC Rcd at 8090, ¶ 6.

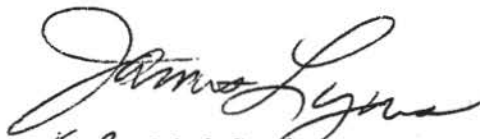
¹⁹ *Id.* at 8090, ¶ 5.

²⁰ 47 C.F.R. § 1.1164(b).

²¹ *NTT America*, 21 FCC Rcd at 8089, ¶ 5.

If you have any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in cursive script, appearing to read "James Lyons".

FOR: Mark Stephens
Chief Financial Officer

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

APR 28 2015

OFFICE OF
MANAGING DIRECTOR

Jonathan E. Allen, Esq.
Rini Coran, PC
1200 New Hampshire Ave., N.W.
Suite 600
Washington, DC 20036

Licensee/Applicant: Cranston Acquisition, LLC
Waiver of regulatory Fees: Financial Hardship
Disposition: **Dismissed and Denied** (47 U.S.C.
§159(c)(2); 47 C.F.R. §§ 0.401, 1.7, 1.1164,
1.1166)

Stations: KMCC (TV), WPXX657 and WPYH720

Fee: FY 2011 Regulatory Fees

Date Request Filed: Sep. 14, 2011

Fee Control No.: RROG 11-00013872

Regulatory Fees (FY 2011): \$ 20,970.00

Dear Counsel:

This responds to Licensee's *Request*¹ for waiver and deferment of the required Fiscal Year (FY) 2011 regulatory fees due for Stations KMCC (TV), WPXX657, and WPYH720. Our records reflect that Licensee did not pay the FY 2011 fees. For the reasons stated herein, we dismiss and deny the *Request*.

Background

On September 14, 2011, Licensee submitted the *Cover Letter* and *Request* with attachments to the Commission's Office of the Managing Director transmitting a "Request for Waiver and/or Deferment of FY 2011 Regulatory Fees" with certain "financial information" that Licensee asked to be treated confidential.

¹ Letter from Jonathan E. Allen, Esq., Rini Coran, PC, 1140 19th Street, N.W., Washington, DC 20036 to FCC, Office of Managing Director, 445 12th St. S.W., Rm 1-A625, Washington, DC (Attn: Regulatory Fee Waiver/Reduction Request) (Sep. 14, 2011) (*Cover Letter*) with Cranston Acquisition, LLC., FRN: 0016172108, Licensee of Station: KMCC(TV), Channel: 32 (Digital), Laughlin, NV, Facility ID: 41237, Request For Waiver And/Or Deferment Of FY 2011 Regulatory Fees (*Request*) with Attachment A, FCC Fee Filer Call Signs, KMCC, WPXX657, & WPYH720; Declaration of Barbara Laurence (*Declaration*); Exhibit A, Financial Documentation, including Cranston II, LLC Balance Sheet as of Mar. 31, 2011; Cranston II, LLC, Profit & Loss, Jan. through Mar. 2011.

In its *Request*, Licensee asserts, on June 17, 2008, it and its "100% parent each filed a voluntary petition for reorganization with the United States Bankruptcy Court, Southern District of New York under Chapter 11."² On the same date, Licensee filed its application to transfer control from "Cranston II, LLC to Cranston II, LLC, Debtor in Possession,"³ and on November 30, 2009, Licensee filed an application to assign its license for KMCC (TV) to "Cranston, LLC Debtor in Possession."⁴ Licensee asserts it "remained under the protection of Chapter 11 ... until earlier [in 2011]."⁵

To justify the requested waiver, Licensee asserts, "[t]he station has faced acute financial challenges in post-bankruptcy operations. Severe financial constraints have limited station revenues, and the challenges in the broader economy and in the broadcast industry in particular have posed significant challenges."⁶ Licensee states, "[i]n addition, the station is predominantly female owned ... [a]lso, in recent years, Licensee has devoted significant resources toward construction of its full-power DTV facilities[, which] costs have placed a severe financial drain on Licensee."⁷ Licensee points first to the attached balance sheet to support its claim that "total liabilities ... far exceeded its total assets,"⁸ and then to its profit and loss statement to support its claim that expenses for amortization and depreciation "do not offset the company's net loss."⁹ Indeed, Licensee asserts, the "station is heavily encumbered by debt."¹⁰ Finally, Licensee asserts compensation payment to officers is limited "relative to total expenses."¹¹

Standards

The Commission's rules at 47 C.F.R. §§ 0.401, 1.7, and 1.1166 establish both the proper location for filing waiver requests and the consequence of dismissal for failing to comply with those rules. The Commission has designated specific offices to receive and process certain matters, thus a request for relief is *filed* only upon receipt at the location designated by the Commission.¹² For example, under section 1.1166 of the Commission's rules, a petition to waive a regulatory fee "must be accompanied by the required fee and FCC Form."¹³ If the request is accompanied by the fee, the request must be submitted to the Commission's lockbox bank.¹⁴ Waiver requests that do not include the required fees or form will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by

² *Request* at 2.

³ *Request* at 2-3.

⁴ *Request* at 3.

⁵ *Id.*; *Declaration* at 1.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*; *Declaration* at 1.

⁹ *Request* at 4; *Declaration* at 1.

¹⁰ *Id.*

¹¹ *Id.*; *Declaration* at 2.

¹² 47 C.F.R. §§ 0.401 ("The Commission maintains several offices and receipt locations. Applications and other filings not submitted in accordance with the addresses or locations ... will be returned to the applicant without processing."); 1.7 ("pleadings and other documents are considered to be filed with the Commission upon their receipt at the location designated by the Commission."); *Champion Communication Services, Inc., Order on Reconsideration*, 15 FCC Rcd 23782, 23783-84 (WTB 2000).

¹³ 47 C.F.R. § 1.1166(c).

¹⁴ 47 C.F.R. § 1.1166(a)(1).

documentation of the financial hardship.¹⁵ "If no fee payment is submitted, the request should be filed with the Commission's Secretary."¹⁶ Filing is accomplished by mailing or otherwise delivering a hard copy of the documents to Office of the Secretary, Federal Communications Commission, Attention: Managing Director, Washington, D.C. 20554.

Under 47 U.S.C. § 159(c)(2) and 47 C.F.R. §§ 1.1164(e), 1.1166, and 1.1910(a)(2) & (3), the Commission will dismiss applications filed by delinquent debtors.¹⁷ The application will be dismissed, and it may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty.¹⁸

Furthermore, under 47 U.S.C. § 159 and 47 C.F.R. §§ 1.1166, the Commission imposes the statutory penalty¹⁹ on any licensee that submits a request for a waiver based on financial hardship that does not include either the full fee or a timely petition to defer payment supported by documentation of the financial hardship.

The Commission recognizes that in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee, and it may be waived, reduced, or deferred upon a showing of good cause²⁰ and a finding that the public interest will be served thereby.²¹ The burden rests with the petitioner to demonstrate a waiver is warranted,²² i.e., that special circumstances warrant a deviation from the general rule, here to collect the regulatory fee, and that the deviation will serve the public interest.²³

¹⁵ 47 C.F.R. § 1.1166(b); Assessment and Collection of Regulatory Fees For Fiscal Year 2011, *Report and Order*, 26 FCC Rcd 10812, 10819, ¶ 17 (2011) ("A regulatee's mere allegation of financial hardship thus does not automatically entitle it to a deferral of its obligation to pay regulatory fees; only a properly supported claim of financial hardship will entitle the regulatee to a deferral. Accordingly, if a request for deferral is not supported by documentation of financial hardship, it will be denied, and an associated petition for waiver or reduction will be dismissed. A regulatee cannot delay payment on the theory that its deferral request triggered an automatic six-month extension of its obligation to pay.").

¹⁶ 47 C.F.R. § 1.1166(a)(2).

¹⁷ 47 U.S.C. § 159(c)(2) ("The Commission may dismiss any application or other filing for failure to pay in a timely manner any fee or penalty under this section."); 47 C.F.R. §§ 1.1164(e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment."); 1.1166(c) ("Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.").

¹⁸ 47 C.F.R. § 1.1164(e).

¹⁹ 47 U.S.C. § 159; 47 C.F.R. § 1.1166; Waivers, Reductions and Deferrals of Regulatory Fees, *Regulatory Fees Fact Sheet* (Sep. 5, 2013) 2013 WL 4773993 (F.C.C.) ("The Commission will dismiss any petition for waiver of a regulatory fee that does not include a payment or the required petition for deferral and supporting documentation, and under 47 U.S.C. § 159(c) and 31 U.S.C. § 3717, the Commission is required to impose the 25% penalty and other relevant charges. A request for waiver, reduction or deferral must be received before the fee due date. * * * The Commission will dismiss a waiver request filed by a delinquent debtor or a petition that does not have the required financial documentation.").

²⁰ 47 C.F.R. § 1.3.

²¹ 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166. See also Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

²² *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

²³ *Northeast Cellular*, 897 F.2d at 1166.

Specifically, an applicant must show extraordinary and compelling circumstances that outweigh the public interest in recouping the Commission's regulatory costs.²⁴ The required "sufficient showing of financial hardship"²⁵ is more than "[m]ere allegations or documentation of financial loss, standing alone." "[I]t [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."²⁶ Thus, to establish a basis for waiver predicated on financial need, the regulatee must provide financial documents including, *e.g.*, a licensee's balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. On this information, the Commission considers on a case-by-case basis whether the licensee met the standard to show the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.²⁷

An applicant's verified evidence of bankruptcy is relevant;²⁸ however, "in some circumstances a significant question may exist as to whether bankruptcy represents extraordinary and compelling circumstances justifying a waiver when balanced against the public interest in reimbursing the Commission for its costs as reflected in the statutory fee provisions."²⁹ Thus, an applicant must present "extraordinary and compelling circumstances showing that a waiver ... would override the public interest" in collecting the fee,³⁰ and we analyze the facts of each case to determine whether the applicant has satisfied both prongs of the Commission's standard, financial hardship and extraordinary³¹ and compelling circumstances³² showing waiver is justified.³³

²⁴ 9 FCC Rcd at 5344 ¶ 29; Phoenix Broadcasting, Inc. Stations KSWD and KPFN Seward, Alaska, *Memorandum Opinion and Order*, 18 FCC Rcd. 26464, 26446, ¶¶ 5-6 (2003) ("Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public. ... [I]n the absence of a documented showing of insufficient funds to pay the regulatory fees, [applicant] has not made a compelling showing that overrides the public interest in the Commission's recouping the costs of its regulatory activities.").

²⁵ *FY 1994 MO&O*, 10 FCC Rcd at 12761-62, ¶ 13.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *See id.* at 12762, ¶ 14 ("[W]here a bankruptcy trustee, receiver, or debtor in possession is negotiating a possible transfer of a license, the regulatory fee could act as an impediment to the negotiations and the transfer of the station to a new licensee.").

²⁹ *Assessment and Collection of Regulatory Fees for Fiscal Year 2003, Notice of Proposed Rulemaking*, 18 FCC Rcd 6085, 6090, ¶ 11 (2003) ("Although fee waivers will generally be given in cases of financial hardship, we nevertheless note that even under our current policies, in some circumstances a significant question may exist as to whether bankruptcy represents extraordinary and compelling circumstances justifying a waiver when balanced against the public interest in reimbursing the Commission for its costs as reflected in the statutory fee provisions. ... We therefore emphasize that under the statutory waiver provisions, case-by-case review of fee waiver requests is necessary to determine the public interest, even in bankruptcy cases.").

³⁰ 47 U.S.C. § 159(d) ("The Commission may waive, reduce, or defer payment of a fee in any specific instance for good cause shown, where such action would promote the public interest."); 47 C.F.R. § 1.1166 ("fee ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest."). *FY 1994 MO&O*, 10 FCC Rcd at 12761, ¶ 12.

³¹ *Black's Law Dictionary* (9th ed. 2009) (extraordinary-"a highly unusual set of facts that are not commonly associated with a particular thing or event").

The bankruptcy proceeding and the applicant's place therein is established with verified court records, such as, in a reorganization under Chapter 11 of the Bankruptcy Code, copies of the relevant filings, forms, and evidence the trustee or debtor-in-possession has complied with its required duties³⁴ by including court-filed financial reports.³⁵ Relevant to this request is the purpose of a Chapter 11 proceeding, which is to restructure the debtor's obligations and allow its business to continue successfully after confirmation.³⁶ The bankruptcy process that begins with filing a petition and an automatic stay and continues until confirmation of the plan, provides breathing room for a business to recoup, evaluate, and deal with creditors. During the process, the debtor operates the business as a debtor-in-possession or under the direction of a trustee, and pays current obligations. The debtor also develops a plan dealing with creditors, and it projects post-confirmation operations. Relevant to post-petition and post-confirmation operations are court-filed financial documents, including, e.g., a statement of financial affairs, monthly operating reports, the plan,³⁷ and a disclosure statement with debtor's plan for the business going forward that has timely and accurate financial information with projections.³⁸ Consistent with our standards, an applicant seeking a waiver of fees post-petition must include relevant financial documentation, such as the plan reflecting debtor-applicant's reasonable financial projections, including the annual regulatory fees.³⁹

Discussion

First, we dismiss because Licensee's submission fails to comply with Commission procedures. Licensee failed to conform its submission to our rules for filing a request to waive the annual regulatory fees and a petition to defer payment of the fees until the Commission reaches a decision on the request for a waiver. Specifically, Licensee submitted the *Request* to the *Office of the Managing Director*,⁴⁰ and by so doing, the *Request* was never filed. Under our rules, a request for relief is filed only upon receipt at the location designated by the Commission.⁴¹ Licensee's *Cover Letter* to the Office of the Managing Director does not

³² *Id.* (compelling—"something so great that irreparable harm or injustice would result if not met").

³³ Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Report and Order*, 18 FCC Rcd 15985, 15989-90, ¶¶ 11, 13, 14 (2003).

³⁴ See 11 U.S.C. § 521.

³⁵ 11 U.S.C. §§ 1106, 1107, 1166; Fed. R. Bkr. P., Rule 1007.

³⁶ *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 203 (1983); *In re Lee Min Ho Chen*, 482 B.R. 473, 478 (D. Puerto Rico, Bkrcty, 2012), *In re Gyro-Trac (USA), Inc.*, 441 B.R. 470, 479 (D.S.C. Bkrcty, 2010).

³⁷ 11 U.S.C. § 1129.

³⁸ See e.g., 11 U.S.C. §§ 1125, 1129; see also *In re Ferguson*, 474 B.R. 466, 476 (D. S.C. Bkrcty, 2012) ("to satisfy the requirements of adequate information under [11 U.S.C.] § 1125, a disclosure statement must contain the necessary financial information, data, and projections").

³⁹ See *In re Idearc, Inc.*, 423 B.R. 138, 167 (N.D. Tx. Bkrcty, 2009) ("To establish the feasibility of a plan, the debtor must present proof through reasonable projections that there will be sufficient cash flow to fund the plan. Such projections cannot be speculative, conjectural or unrealistic.").

⁴⁰ *Cover Letter*.

⁴¹ 47 C.F.R. §§ 0.401 ("The Commission maintains several offices and receipt locations. Applications and other filings not submitted in accordance with the addresses or locations ... will be returned to the applicant without processing."); 1.7 ("pleadings and other documents are considered to be filed with the Commission upon their receipt at the location designated by the Commission."); *Champion Communication Services, Inc., Order on Reconsideration*, 15 FCC Rcd 23782, 23783-84 (WTB 2000).

ameliorate problems resulting from the improper submission. Under 47 C.F.R. § 1.1166(a)(2), “[i]f no fee payment is submitted, the request should be filed with the Commission’s Secretary.”

The consequences for failing to follow our rule are serious. Because Licensee’s *Request* is not *filed*,⁴² and Licensee did not pay the fees, it is delinquent. Thus, the 25% late payment penalty applies. Furthermore, because of the delinquency, Licensee is subject to sanctions, including those set forth at 47 U.S.C. § 159(c)(2),⁴³ 47 C.F.R. §§ 1.1164, 1.1166, and 1.1910 (the Commission’s red light rule), and the Debt Collection Improvement Act of 1996 (DCIA).⁴⁴ Hence, under the law, we dismiss the *Request*.⁴⁵

Our dismissal ends the matter, however, as a matter of administrative economy, we look to the substance of the *Request*, and, as we discuss next, we deny.

Licensee’s assertions and incomplete documentation does not establish good cause and that the public interest will be served by deferring the payment and waiving the fees, rather than requiring payment. For example, Licensee asserts broadly the existence of “acute financial challenges,”⁴⁶ “severe financial constraints,”⁴⁷ and “significant challenges”;⁴⁸ however, Licensee did not define the terms or establish their relevance in the context of post-bankruptcy operations under the terms of a plan. Moreover, Licensee failed to relate the financial information in the balance sheet and profit & loss statement to bankruptcy proceeding filings.

Our analysis begins with Licensee’s financial documentation,⁴⁹ which is incomplete. Rather than providing documentation that relates post-bankruptcy operations to the bankruptcy proceeding financial affairs, disclosure statement, plan, and post-bankruptcy financing arrangements, Licensee summarizes the bankruptcy proceeding and attaches a balance sheet as of March 31, 2011, and a profit and loss statement for three months. Because Licensee asserted only that it remained under the protection of the court “until earlier this year[, 2011],”⁵⁰ and it failed to provide the dates when the plan was effective or when the bankruptcy proceeding closed, it is unclear whether the financial information is current and relevant.

Licensee asserts that on June 17, 2008, it initiated a bankruptcy proceeding for reorganization under Chapter 11 of the Bankruptcy Code,⁵¹ and that it exited the process in 2011. From this summary, we presume that Licensee complied with Chapter 11 court rules and procedures, including submission of court-required financial records. Yet, Licensee failed to provide any of that information, the confirmed plan, or other necessary evidence. Accordingly, we are left to speculate on the content of required records, such as First Day Pleadings, a

⁴² 47 C.F.R. § 1.1166.

⁴³ 47 U.S.C. § 159(c)(2) (“The Commission may dismiss any application or other filing for failure to pay in a timely manner any fee or penalty under this section.”).

⁴⁴ Public Law 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

⁴⁵ 47 C.F.R. §§ 0.401, 1.7, 1.1166.

⁴⁶ *Request* at 3.

⁴⁷ *Id.*, Declaration at 1.

⁴⁸ *Request* at 3.

⁴⁹ 47 C.F.R. § 1.1166(d); *FY 2011 Regulatory Fee Report and Order*, *supra*.

⁵⁰ *Request* at 3.

⁵¹ *Request* at 1.

statement of financial affairs, monthly operating reports, financial projections, requested and allowed expenditures for operations after June 17, 2008, and the proposed and final plans. We take note that a Chapter 11 proceeding permits a debtor to restructure its obligations, so as to continue business during the period it is under the court's protection and to continue successfully after confirmation.⁵² We take note of bankruptcy court procedures and from that presume that Licensee developed a plan dealing with creditors that projecting expenses for post-confirmation operations, including annual regulatory fees.⁵³ Furthermore, Licensee's current operations should be consistent with the plan; if not, Licensee has a duty to explain material differences from the plan. Licensee failed to resolve the gaps by submitting incomplete financial documentation.

Moreover, Licensee's assertions are inconsistent. For example, on one hand, Licensee emerged from Chapter 11 bankruptcy, presumably with a confirmed plan, so the financial obligations that resulting in the filing should be resolved in the confirmed plan. On the other hand, Licensee asserts it is "heavily encumbered,"⁵⁴ but it fails to provide details of the debt, *e.g.*, the amount, terms, or the existence of any security agreement or collateral, or whether that debt is addressed in the plan. Furthermore, Licensee did not properly describe the affect of the debt on Licensee's operations. Because Licensee failed to provide essential information about the debt, we infer from the available information that the referenced encumbrance is the financing agreement reported on Licensee's December 1, 2011-ownership report and the "Fourth Amendment to Financing Agreement with Cranston II, LLC; Cranston Acquisition, LLC; Barbara Laurence, Lynn Welshman, Victory Park Credit Opportunities Master Fund, and Victory Park Management, LLC which was entered into February 2011 and expired December 2011."⁵⁵

In addition, Licensee did not persuade us that compelling circumstances flow from future changes to the station's daily operations or its involvement in negotiations for financing.⁵⁶ Indeed, Licensee did not explain to what extent, if any, such efforts or agreements, now or in the future, affect the financial information provided or whether, a period of deferral of payment would be more appropriate than a waiver of the fees.

⁵² *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 203 (1983); *In re Lee Min Ho Chen*, 482 B.R. 473, 478 (D. Puerto Rico, Bkrtcy, 2012), *In re Gyro-Trac (USA), Inc.*, 441 B.R. 470, 479 (D.S.C. Bkrtcy, 2010).

⁵³ See *e.g.*, 11 U.S.C. §§ 1125, 1129; see *In re Ferguson*, 474 B.R. 466, 476 (D. S.C. Bkrtcy, 2012) ("to satisfy the requirements of adequate information under [11 U.S.C.] § 1125, a disclosure statement must contain the necessary financial information, data, and projections"); see *In re Idearc, Inc.*, 423 B.R. 138, 167 (N.D. Tx. Bkrtcy, 2009) ("To establish the feasibility of a plan, the debtor must present proof through reasonable projections that there will be sufficient cash flow to fund the plan. Such projections cannot be speculative, conjectural or unrealistic.").

⁵⁴ *Laurence Declaration* at 2.

⁵⁵ FCC 323 Ownership Report for Commercial Broadcast Stations, File No. BOA-20111201OPL, Biennial Report, Section II-B (Contract Information, Fourth Amendment To Financing Agreement with Cranston II, LLC; Cranston Acquisition, LLC; Barbara Laurence, Lynn Welshman, Victory Park Credit Opportunities Master Fund, and Victory Park Management, LLC Date of Execution February 2011, Date of Expiration, December 2011.) We note that this information was not previously on FCC 323 Ownership Report for Commercial Broadcast Stations.

⁵⁶ *Request* at 2-3.

Without relevant documentation to explain how the current operations and expenses differ from the projections leading up to the confirmed plan, Licensee's *Request* is incomplete,⁵⁷ and Licensee is unable to show extraordinary and compelling circumstances justifying a waiver when balanced against the public interest in reimbursing the Commission for its costs.

We also note that when the Commission announced that evidence of bankruptcy or receivership is sufficient to establish financial hardship,⁵⁸ it was referring to the situation where the party was proceeding in a straight bankruptcy liquidation case. A party filing under Chapter 11 is not a *bankrupt*.⁵⁹ Moreover, in 2003, the Commission emphasized the applicant's duty to show that the bankruptcy proceeding represents extraordinary and compelling circumstances justifying a waiver when balanced against the public interest in reimbursing the Commission for its costs as reflected in the statutory fee provisions.⁶⁰ Accordingly, we deny Licensee's *Request*.

Licensee requested confidential treatment of the submitted financial data. Under 47 C.F.R. §§ 0.442(d)(1) and 0.459(d)(3), we do not routinely rule on requests for confidential treatment until we receive a request for access to the records; however, in the meantime, we treat the records confidentially.

⁵⁷ 47 C.F.R. § 1.65 ("Each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application ... whenever the information furnished ... is no longer substantially accurate and complete in all significant respects, the applicant shall as promptly as possible and in any event within 30 days, unless good cause is shown, amend or request the amendment of the application so as to furnish such additional or corrected information as may be appropriate."); *Bartholdi Cable Co. Inc. v FCC*, 114 F.3d 274, 280 (DC Cir. 1997) (The Commission "'need not sift pleadings and documents' to identify arguments that are not 'stated with clarity' by a petitioner. It is the petitioner that has the burden of clarifying its petition before the agency.").

⁵⁸ *FY 1994 MO&O*, 10 FCC Rcd at 12761, ¶ 14.

⁵⁹ *Matter of Phillips*, 966 F.2d 926, 930 (5th Cir. 1992), *rehearing denied* (1992),

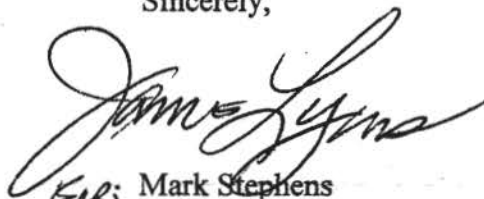
Congress consolidated federal bankruptcy law in the Bankruptcy Act of 1898. *See* Act of July 1, 1898, c. 541, 30 Stat. 544. At that time, bankruptcy law only facilitated liquidation. Not until 1933 did Congress amend the Bankruptcy Act to permit reorganization of certain entities. *See* Pub.L. No. 72-420, 47 Stat. 1474 (1933). In 1938, Congress amended the Bankruptcy Act with the precursor to Chapter 11 to facilitate general corporate reorganization. *See* Act of June 22, 1938, Pub.L. No. 74-575, 52 Stat. 840 (1938). Until Congress substantially revised the Bankruptcy Act with the Bankruptcy Reform Act of 1978, the Bankruptcy Act apparently referred to entities undergoing Chapter 7 liquidation as "bankrupts," and those undergoing Chapter 11 reorganization as "debtors." *See* S. REP. No. 989, 95th Cong., 2d Sess. 23 (1978), *reprinted in* Historical and Revision Notes following 11 U.S.C.A. § 101(12) at 36 (1979), *and reprinted in* 1978 U.S.C.C.A.N. 5787, 5809. But the Bankruptcy Reform Act of 1978 removed all references to "bankrupt" in federal bankruptcy law, created the Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, and adopted "debtor" to refer to all who seek protection under the Code, whether they do so through liquidation under Chapter 7 or reorganization under Chapter 11. *See* 11 U.S.C. § 101 (12); *see generally* H.R. REP. No. 595, 95th Cong., 2d Sess. 3-5 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 5965-66 (recounting Reform Act's history and purpose).

⁶⁰ 18 FCC Rcd at 6090, ¶ 11.

Jonathan E. Allen, Esq.

Payment of \$ 20,970.00, Licensee's FY 2011 regulatory fees, is now due,⁶¹ and that amount must be received, together with a Form 159, within 30 days of the date of this letter. If Licensee's full payment of that amount is not received by that date, any unpaid portion of the debt will be delinquent as of the date of this letter, and on such amount, we will assess the statutory penalty of 25% of the unpaid fee,⁶² and assess interest and applicable additional penalties and charges required by 31 U.S.C. § 3717(e) that will accrue from the date of this letter. Furthermore, under the law,⁶³ the Commission will initiate collection proceedings. If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens
FIR: Mark Stephens
Chief Financial Officer

⁶¹ By this letter, we also grant Licensee's petition for a deferral, the period of which has now ended.

⁶² 47 U.S.C. § 159(c)(1). See 9 FCC Rcd at 5346, ¶ 35 ("the petitioner will have 30 days to [pay the fee] in order to avoid the assessment of penalty charges and the invocation of any other available remedy. The filing of a petition for reconsideration will not toll this 30-day period.").

⁶³ See 47 C.F.R. § 1.1901, *et seq.*

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAY 20 2015

OFFICE OF
MANAGING DIRECTOR

Jonathan E. Allen, Esq.
Rini Coran, PC
1200 New Hampshire Ave., N.W.
Suite 600
Washington, DC 20036

Licensee/Applicant: Cranston Acquisition, LLC
Waiver of regulatory Fees: Financial Hardship
Disposition: **Dismissed and Denied** (47 U.S.C.
§159(c)(2); 47 C.F.R. §§ 1.1164, 1.1166)
Stations: KMCC (TV), WQPQ984 and WQPQ985
Fee: FY 2012 Regulatory Fees
Date Request Filed: Sep. 14, 2011
Fee Control No.: RROG 12-00014808
Regulatory Fees (FY 2012): \$21,945.00

Dear Counsel:

This responds to Licensee's *Request*¹ for waiver and deferment of the required Fiscal Year (FY) 2012 regulatory fees due for Stations KMCC (TV), WQPQ984, and WQPQ985. Our

¹ Letter from Jonathan E. Allen, Esq., Rini Coran, PC, 1140 19th Street, N.W., Suite 600, Washington, DC 20036 to Marlene H. Dortch, Secretary, FCC, Office of Managing Director, 445 12th St. S.W., Rm TW-B204, Washington, DC 20554 (Attn: Regulatory Fee Waiver/Reduction Request) (Sep. 13, 2012) (*Cover Letter*) with Cranston Acquisition, LLC., FRN: 0016172108, Licensee of Station: KMCC(TV), Channel: 32 (Digital), Laughlin, NV, Facility ID: 41237, Request For Waiver And/Or Deferment Of FY 2012 Regulatory Fees (*Request*) with Attachment A, FCC Fee Filer Call Signs, KMCC, WPQP984, & WQPQ985; Declaration of Scott Zemnick (*Declaration*); Exhibit A, Financial Documentation, including Schedule K-1, (Form 1065), Tax Year 2011, Partner's Share of Income, Deductions, Credits, etc., Cranston II, LLC, (Beam Tilt Corporation), Form 8879-PE, Tax Year 2011, Cranston II, LLC, Form 1065, Tax Year 2011, Cranston II, LLC, Schedule K-1, (Form 1065), Tax Year 2011, Partner's Share of Income, Deductions, Credits, etc., Cranston II, LLC, (Barbara Laurence), Schedule K-1, (Form 1065), Tax Year 2011, Partner's Share of Income, Deductions, Credits, etc., Cranston II, LLC, (Rini Coran, PC), Schedule K-1, (Form 1065), Tax Year 2011, Partner's Share of Income, Deductions, Credits, etc., Cranston II, LLC, (Seth Kanagis), Schedule K-1, (Form 1065), Tax Year 2011, Partner's Share of Income, Deductions, Credits, etc., Cranston II, LLC, (Martin Genauer), Schedule K-1, (Form 1065), Tax Year 2011, Partner's Share of Income, Deductions, Credits, etc., Cranston II, LLC, (Jim McPhetridge), Schedule K-1, (Form 1065), Tax Year 2011, Partner's Share of Income, Deductions, Credits, etc., Cranston II, LLC, (Berkowitz, Dick Pollack & Brant), Schedule K-1, (Form 1065), Tax Year 2011, Partner's Share of Income, Deductions, Credits, etc., Cranston II, LLC, (Welshman 1210, LLC), Schedule K-1, (Form 1065), Tax Year 2011, Partner's Share of Income, Deductions, Credits, etc., Cranston II, LLC, (Denmark Mgt, LLC), Schedule K-1, (Form 1065), Tax Year 2011, Partner's Share of Income, Deductions, Credits, etc., Cranston II, LLC, (Notowitz Equity Trust Co., Custodian FBO), Schedule K-1, (Form 1065), Tax Year 2011, Partner's Share of Income, Deductions, Credits, etc., Cranston II, LLC, (Paul Libovitz), Schedule K-1, (Form 1065), Tax Year 2011, Partner's Share of Income, Deductions, Credits, etc., Cranston II, LLC, (Lee Degenstein), Schedule K-1, (Form 1065), Tax Year 2011, Partner's Share of Income, Deductions, Credits, etc., Cranston II, LLC, (Lynn Welshman), Schedule K-1, (Form 1065), Tax Year 2011, Partner's Share of Income, Deductions, Credits, etc., Cranston II, LLC, (Hye Tech, c/o Andre Nazarian), Schedule M-3, Form 1065, Tax Year 2011, Net Income (Loss) Reconciliation for Certain Partnerships.

records reflect that Licensee did not pay the FY 2012 fees, rather it seeks to defer payment pending disposition of the waiver request. As we discuss below, we dismiss and deny the *Request* because Licensee failed to show both extraordinary and compelling circumstances and that a waiver will promote the public interest, and we demand immediate payment.

Background

On September 13, 2012, Licensee submitted the *Cover Letter* and *Request* with attachments that Licensee asked to be treated confidential.

Licensee asserts, on June 17, 2008, it and its "100% parent each filed a voluntary petition for reorganization with the United States Bankruptcy Court, Southern District of New York under Chapter 11."² Later, on July 17, 2008, Licensee applied to transfer control of call sign KMCC from "Cranston II, LLC to Cranston II, LLC, Debtor in Possession,"³ and on November 30, 2009, Licensee applied to assign call sign KMCC (TV) to "Cranston, LLC Debtor in Possession."⁴ Licensee asserts it "remained under the protection of Chapter 11 ... until 2011."⁵

To justify the requested waiver, Licensee asserts, "[t]he station has faced acute financial challenges in post-bankruptcy operations. Severe financial constraints have limited station revenues, and the challenges in the broader economy and in the broadcast industry in particular have posed significant challenges."⁶ Licensee states, "[c]osts of construction of the station's full-power DTV facilities have placed a severe financial drain on Licensee."⁷ Licensee points to its tax return to support its claim that "total liabilities ... far exceeded its total assets"⁸ and that the "station is heavily encumbered by debt."⁹ Finally, Licensee asserts its "officers have received no compensation in 2012," and "expenses for employees" were a "small fraction of the total expenses" for the "first eight months of 2012."¹⁰

Standards

The Commission's rules at 47 C.F.R. §§ 0.401, 1.7, and 1.1166 establish both the proper location and procedures for filing waiver requests and the consequence of dismissal for failing to comply with those rules. The Commission has designated specific offices to receive and process certain matters, thus a request for relief is *filed* only upon receipt at the location designated by the Commission.¹¹ For example, under section 1.1166 of the Commission's rules, a petition to

² *Request* at 2. See also FCC Form 316, Application for Consent to Assign Broadcast Station Construction Permit or License or to Transfer Control of Entity Holding Broadcast Station Construction Permit or License, FCC File No. BTCCT-20080717AMY (Jul. 17, 2008).

³ *Request* at 2-3.

⁴ *Request* at 3.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*; *Declaration* at 1.

⁹ *Request* at 4; *Declaration* at 1.

¹⁰ *Request* at 4; *Declaration* at 1-24.

¹¹ 47 C.F.R. §§ 0.401 ("The Commission maintains several offices and receipt locations. Applications and other filings not submitted in accordance with the addresses or locations ... will be returned to the applicant without processing."); 1.7 ("pleadings and other documents are considered to be filed with the Commission upon their

waive a regulatory fee "must be accompanied by the required fee and FCC Form."¹² If the applicant includes the fee, the request must be submitted to the Commission's lockbox bank.¹³ Waiver requests that do not include the required fees or form will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.¹⁴ "If no fee payment is submitted, the request should be filed with the Commission's Secretary."¹⁵ Filing is accomplished by mailing or otherwise delivering a hard copy of the documents to Office of the Secretary, Federal Communications Commission, Attention: Managing Director, Washington, D.C. 20554.

Under 47 U.S.C. § 159(c)(2) and 47 C.F.R. §§ 1.1164(e), 1.1166, and 1.1910(a)(2) & (3), the Commission will dismiss applications filed by delinquent debtors.¹⁶ When the application is dismissed, it may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty.¹⁷

Furthermore, under 47 U.S.C. § 159 and 47 C.F.R. §§ 1.1166, the Commission imposes the statutory penalty¹⁸ on any licensee that submits a request for a waiver based on financial hardship that does not include either the full fee or a timely petition to defer payment supported by documentation of the financial hardship.

The Commission recognizes that in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee, and it may be waived, reduced, or deferred upon a showing of good cause¹⁹ and a finding that the public interest will be served thereby.²⁰

receipt at the location designated by the Commission."); *Champion Communication Services, Inc., Order on Reconsideration*, 15 FCC Rcd 23782, 23783-84 (WTB 2000).

¹² 47 C.F.R. § 1.1166(c).

¹³ 47 C.F.R. § 1.1166(a)(1).

¹⁴ 47 C.F.R. § 1.1166(b); *Assessment and Collection of Regulatory Fees For Fiscal Year 2011, Report and Order*, 26 FCC Rcd 10812, 10819, ¶ 17 (2011) ("A regulatee's mere allegation of financial hardship thus does not automatically entitle it to a deferral of its obligation to pay regulatory fees; only a properly supported claim of financial hardship will entitle the regulatee to a deferral. Accordingly, if a request for deferral is not supported by documentation of financial hardship, it will be denied, and an associated petition for waiver or reduction will be dismissed. A regulatee cannot delay payment on the theory that its deferral request triggered an automatic six-month extension of its obligation to pay.").

¹⁵ 47 C.F.R. § 1.1166(a)(2).

¹⁶ 47 U.S.C. § 159(c)(2) ("The Commission may dismiss any application or other filing for failure to pay in a timely manner any fee or penalty under this section."); 47 C.F.R. §§ 1.1164(e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment."); 1.1166(c) ("Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.").

¹⁷ 47 C.F.R. § 1.1164(e).

¹⁸ 47 U.S.C. § 159; 47 C.F.R. § 1.1166; *Waivers, Reductions and Deferrals of Regulatory Fees, Regulatory Fees Fact Sheet* (Sep. 5, 2013) 2013 WL 4773993 (F.C.C.) ("The Commission will dismiss any petition for waiver of a regulatory fee that does not include a payment or the required petition for deferral and supporting documentation, and under 47 U.S.C. § 159(c) and 31 U.S.C. § 3717, the Commission is required to impose the 25% penalty and other relevant charges. A request for waiver, reduction or deferral must be received before the fee due date. * * * The Commission will dismiss a waiver request filed by a delinquent debtor or a petition that does not have the required financial documentation.").

¹⁹ 47 C.F.R. § 1.3.

The burden rests with the petitioner to demonstrate a waiver is warranted,²¹ i.e., that special circumstances warrant a deviation from the general rule, here to collect the regulatory fee, and that the deviation will serve the public interest.²²

Specifically, an applicant must show extraordinary and compelling circumstances that outweigh the public interest in recouping the Commission's regulatory costs.²³ The required "sufficient showing of financial hardship"²⁴ is more than "[m]ere allegations or documentation of financial loss, standing alone." "[I]t [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."²⁵ Thus, to establish a basis for waiver predicated on financial need, the regulatee must provide financial documents including, e.g., a licensee's balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. On this information, the Commission considers on a case-by-case basis whether the licensee met the standard to show the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.²⁶

An applicant's verified evidence of bankruptcy is relevant,²⁷ however, "in some circumstances a significant question may exist as to whether bankruptcy represents extraordinary and compelling circumstances justifying a waiver when balanced against the public interest in reimbursing the Commission for its costs as reflected in the statutory fee provisions."²⁸ Thus, an applicant must present "extraordinary and compelling circumstances showing that a waiver ...

²⁰ 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166. See also Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

²¹ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

²² *Northeast Cellular*, 897 F.2d at 1166.

²³ 9 FCC Rcd at 5344 ¶ 29; *Phoenix Broadcasting, Inc. Stations KSWD and KPFI Seward, Alaska, Memorandum Opinion and Order*, 18 FCC Rcd. 26464, 26446, ¶¶ 5-6 (2003) ("Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public. ... [I]n the absence of a documented showing of insufficient funds to pay the regulatory fees, [applicant] has not made a compelling showing that overrides the public interest in the Commission's recouping the costs of its regulatory activities.").

²⁴ *FY 1994 MO&O*, 10 FCC Rcd at 12761-62, ¶ 13.

²⁵ *Id.*

²⁶ *Id.*

²⁷ See *id.* at 12762, ¶ 14 ("[W]here a bankruptcy trustee, receiver, or debtor in possession is negotiating a possible transfer of a license, the regulatory fee could act as an impediment to the negotiations and the transfer of the station to a new licensee.").

²⁸ *Assessment and Collection of Regulatory Fees for Fiscal Year 2003, Notice of Proposed Rulemaking*, 18 FCC Rcd 6085, 6090, ¶ 11 (2003) ("Although fee waivers will generally be given in cases of financial hardship, we nevertheless note that even under our current policies, in some circumstances a significant question may exist as to whether bankruptcy represents extraordinary and compelling circumstances justifying a waiver when balanced against the public interest in reimbursing the Commission for its costs as reflected in the statutory fee provisions. ... We therefore emphasize that under the statutory waiver provisions, case-by-case review of fee waiver requests is necessary to determine the public interest, even in bankruptcy cases.").

would override the public interest” in collecting the fee,²⁹ and we analyze the facts of each case to determine whether the applicant has satisfied both prongs of the Commission’s standard, financial hardship and extraordinary³⁰ and compelling circumstances³¹ showing waiver is justified.³²

The bankruptcy proceeding and the applicant’s place therein is established with verified court records, such as, in a reorganization under Chapter 11 of the Bankruptcy Code, copies of the relevant filings, forms, and evidence the trustee or debtor-in-possession has complied with its required duties³³ by including court-filed financial reports.³⁴ Relevant to this request is the purpose of a Chapter 11 proceeding, which is to restructure the debtor’s obligations and allow its business to continue successfully after confirmation.³⁵ The bankruptcy process that begins with filing a petition and continues until confirmation of the plan provides breathing room for a business to recoup, evaluate, and deal with creditors. During the process, the debtor operates the business as a debtor-in-possession or under the direction of a trustee, and pays current obligations. The debtor also develops a plan dealing with creditors, and it projects post-confirmation operations. Relevant to post-petition and post-confirmation operations are court-filed financial documents, including, *e.g.*, a statement of financial affairs, monthly operating reports, the plan,³⁶ and a disclosure statement with debtor’s plan for the business going forward that has timely and accurate financial information with projections.³⁷ Consistent with our standards, an applicant seeking a waiver of fees post-petition must include relevant financial documentation, such as the plan reflecting debtor-applicant’s reasonable financial projections, including the annual regulatory fees.³⁸

Discussion

First, we dismiss because Licensee’s submission fails to comply with Commission procedures for filing a request to waive the annual regulatory fees and a petition to defer payment of the fees until the Commission reaches a decision on the request for a waiver.

²⁹ 47 U.S.C. § 159(d) (“The Commission may waive, reduce, or defer payment of a fee in any specific instance for good cause shown, where such action would promote the public interest.”); 47 C.F.R. § 1.1166 (“fee ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest.”). *FY 1994 MO&O*, 10 FCC Rcd at 12761, ¶ 12.

³⁰ Black’s Law Dictionary (9th ed. 2009)(extraordinary-“a highly unusual set of facts that are not commonly associated with a particular thing or event”).

³¹ *Id.* (compelling-“something so great that irreparable harm or injustice would result if not met”).

³² Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Report and Order*, 18 FCC Rcd 15985, 15989-90, ¶¶ 11, 13, 14 (2003).

³³ See 11 U.S.C. § 521.

³⁴ 11 U.S.C. §§ 1106, 1107, 1166; Fed. R. Bnkr. P., Rule 1007.

³⁵ *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 203 (1983); *In re Lee Min Ho Chen*, 482 B.R. 473, 478 (D. Puerto Rico, Bkrtcy, 2012), *In re Gyro-Trac (USA), Inc.*, 441 B.R. 470, 479 (D.S.C. Bkrtcy, 2010).

³⁶ 11 U.S.C. § 1129.

³⁷ See *e.g.*, 11 U.S.C. §§ 1125, 1129; see also *In re Ferguson*, 474 B.R. 466, 476 (D. S.C. Bkrtcy, 2012) (“to satisfy the requirements of adequate information under [11 U.S.C.] § 1125, a disclosure statement must contain the necessary financial information, data, and projections”).

³⁸ See *In re Idearc, Inc.*, 423 B.R. 138, 167 (N.D. Tx. Bkrtcy, 2009) (“To establish the feasibility of a plan, the debtor must present proof through reasonable projections that there will be sufficient cash flow to fund the plan. Such projections cannot be speculative, conjectural or unrealistic.”).

Licensee followed 47 C.F.R. § 1.1166(a)(2) by filing the *Request* at the Office of the Secretary; however, Licensee failed to provide a properly supported petition to defer payment showing both good cause and that the public interest is served by granting the relief. Because this standard applies to both a petition to defer payment and a request to waive the fees, we will provide a single analysis. We note, the consequences for failing to meet our standard for a deferral of payment is dismissal, which triggers the statutory penalty under 47 U.S.C. § 159 and 47 C.F.R. § 1.1166³⁹ when a licensee submits a request for a waiver based on financial hardship that does not include either the full fee or a timely petition to defer payment supported by documentation of the financial hardship. Consequently, the applicant is subject to sanctions, including those set forth at 47 U.S.C. § 159(c)(2),⁴⁰ 47 C.F.R. §§ 1.1164, 1.1166, and 1.1910 (the Commission's red light rule), and the Debt Collection Improvement Act of 1996 (DCIA).⁴¹

Licensee's assertions and incomplete documentation do not establish good cause and that the public interest will be served by deferring the payment and waiving the fees, rather than requiring payment. For example, Licensee asserts broadly the existence of "acute financial challenges,"⁴² "severe financial constraints,"⁴³ and "significant challenges";⁴⁴ however, Licensee did not define the terms or establish their relevance in the context of post-bankruptcy operations under the terms of a plan. Moreover, Licensee failed to relate its income tax based financial information with to the former bankruptcy proceeding and the petition to defer payment and the waiver request.

Our analysis begins with Licensee's financial documentation.⁴⁵ It is incomplete. Rather than providing documentation that relates post-bankruptcy operations to the bankruptcy proceeding, including the financial affairs, disclosure statement, plan, and post-bankruptcy financing arrangements, Licensee merely summarizes the bankruptcy proceeding and attaches tax year 2012 forms. Licensee asserts it "emerged from bankruptcy in 2011. Efforts to implement changes in day-to-day operations and programming have been insufficient to generate significant revenues. [Furthermore, t]he station is heavily encumbered by debt."⁴⁶ These conclusions do not provide details of the plan, *e.g.*, when it was effective, when the bankruptcy proceeding closed and how expenditures in Licensee's post-bankruptcy operations differ from financial projections presented as part of the plan to obtain court approval to exit from bankruptcy protection. Moreover, the tax year 2012 forms do not present evidence of financial hardship that is compelling and extraordinary. Indeed, the fundamental purpose of reporting significant business

³⁹ 47 U.S.C. § 159; 47 C.F.R. § 1.1166; Waivers, Reductions and Deferments of Regulatory Fees, *Regulatory Fees Fact Sheet* (Sep. 5, 2013) 2013 WL 4773993 (F.C.C.) ("The Commission will dismiss any petition for waiver of a regulatory fee that does not include a payment or the required petition for deferral and supporting documentation, and under 47 U.S.C. § 159(c) and 31 U.S.C. § 3717, the Commission is required to impose the 25% penalty and other relevant charges. A request for waiver, reduction or deferral must be received before the fee due date. * * * The Commission will dismiss a waiver request filed by a delinquent debtor or a petition that does not have the required financial documentation.").

⁴⁰ 47 U.S.C. § 159(c)(2) ("The Commission may dismiss any application or other filing for failure to pay in a timely manner any fee or penalty under this section.").

⁴¹ Public Law 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

⁴² *Request* at 3.

⁴³ *Id.*, *Declaration* at 1.

⁴⁴ *Request* at 3.

⁴⁵ 47 C.F.R. § 1.1166(d); *FY 2011 Regulatory Fee Report and Order*, *supra*.

⁴⁶ *Declaration* at 1.

deductions on the income tax forms is to reduce tax liability on the gross profit. It does not fairly represent the financial ability of the members comprising the several layers of business entities above Licensee.

Specifically, relevant to post-petition and post-confirmation operations are the court-filed financial documents, including, *e.g.*, a statement of financial affairs, monthly operating reports, the plan,⁴⁷ and a disclosure statement with debtor's plan for the business going forward that has timely and accurate financial information with projections.⁴⁸ Consistent with our standards, an applicant seeking a waiver of fees post-petition must include relevant financial documentation, such as the plan reflecting debtor-applicant's reasonable financial projections, including the annual regulatory fees.⁴⁹ Here, Licensee fails to explain what, if any, material changes followed the bankruptcy proceeding, *e.g.*, (1) the circumstances under which Licensee or the debtor-in-possession failed to anticipate that payment the annual regulatory fee is an essential component of the financial projections to exit bankruptcy, (2) what circumstances, if any, arose to alter the projected financial arrangements leading to the approved plan, and (3) what circumstances, if any, arose to alter the terms of post-bankruptcy financing.

For example, Licensee asserts that on June 17, 2008, it initiated a bankruptcy proceeding for reorganization under Chapter 11 of the Bankruptcy Code,⁵⁰ and that it exited the process in 2011. We presume from this summary that Licensee complied with routine Chapter 11 court rules and procedures, including submission of court-required financial records. Further, we take note that a Chapter 11 proceeding permits a debtor to restructure its obligations, so as to continue business during the period it is under the court's protection and to continue successfully after confirmation.⁵¹ We also note that Chapter 11 bankruptcy court procedures, which in this case concluded with a plan dealing with creditors, include financial documentation projecting expenses for post-confirmation operations, including, for example, annual regulatory fees.⁵² As such, we presume that Licensee is conducting business operations consistent with the plan and the projections. If we are wrong, and there is a material change in the information that led to a confirmed plan and exit from bankruptcy protection, Licensee must include the complete relevant explanation in its *Request*. In spite of the duty, Licensee fails to provide any of the relevant information or necessary evidence to support the assertions. Instead, Licensee leaves us to speculate about the content of required records, such as First Day Pleadings, a statement of financial affairs, monthly operating reports, financial projections, requested and allowed

⁴⁷ 11 U.S.C. § 1129.

⁴⁸ See *e.g.*, 11 U.S.C. §§ 1125, 1129; see also *In re Ferguson*, 474 B.R. 466, 476 (D. S.C. Bkrtcy, 2012) ("to satisfy the requirements of adequate information under [11 U.S.C.] § 1125, a disclosure statement must contain the necessary financial information, data, and projections").

⁴⁹ See *In re Idearc, Inc.*, 423 B.R. 138, 167 (N.D. Tx. Bkrtcy, 2009) ("To establish the feasibility of a plan, the debtor must present proof through reasonable projections that there will be sufficient cash flow to fund the plan. Such projections cannot be speculative, conjectural or unrealistic.").

⁵⁰ *Request* at 1.

⁵¹ *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 203 (1983); *In re Lee Min Ho Chen*, 482 B.R. 473, 478 (D. Puerto Rico, Bkrtcy, 2012), *In re Gyro-Trac (USA), Inc.*, 441 B.R. 470, 479 (D.S.C. Bkrtcy, 2010).

⁵² See *e.g.*, 11 U.S.C. §§ 1125, 1129; see *In re Ferguson*, 474 B.R. 466, 476 (D. S.C. Bkrtcy, 2012) ("to satisfy the requirements of adequate information under [11 U.S.C.] § 1125, a disclosure statement must contain the necessary financial information, data, and projections"); see *In re Idearc, Inc.*, 423 B.R. 138, 167 (N.D. Tx. Bkrtcy, 2009) ("To establish the feasibility of a plan, the debtor must present proof through reasonable projections that there will be sufficient cash flow to fund the plan. Such projections cannot be speculative, conjectural or unrealistic.").

expenditures for operations after June 17, 2008, and the proposed and final plans. We will not fill in Licensee's gaps that result in incomplete financial documentation to support the petition to defer payment and the request for waiver. Simply, the petition to defer payment is incomplete.

Moreover, Licensee's assertions are incomplete and unsupported. For example, Licensee asserts it emerged from Chapter 11 bankruptcy, presumably with a confirmed plan; as such, the financial obligations Licensee asserts as reasons for waiver should have been raised and resolved during the bankruptcy proceeding. Yet, Licensee fails to offer an explanation. Next, Licensee asserts it is "heavily encumbered,"⁵³ which presumably refers to typical post-bankruptcy bridge financing often in the plan. Here, however, Licensee fails to provide full details of the debt, e.g., the terms, the existence of any security agreement or collateral, whether that debt was addressed in the plan.

Furthermore, Licensee did not properly describe the affect of the debt on Licensee's operations. Licensee did not persuade us that compelling circumstances flow from the asserted future changes to the station's daily operations or its involvement in negotiations for financing.⁵⁴ Indeed, Licensee did not explain to what extent, if any, such efforts or agreements, now or in the future, affect the financial information provided or whether, a period of deferral of payment would be more appropriate than a waiver of the fees.

Without relevant documentation to explain how the current operations and expenses differ from the projections leading up to the confirmed plan, Licensee's *Request* is incomplete,⁵⁵ and Licensee is unable to show extraordinary and compelling circumstances justifying a waiver when balanced against the public interest in reimbursing the Commission for its costs.

We note that Licensee fails to show how the public interest is served by either deferring payment of or waiving the fee. Although Licensee acknowledges both prongs of our standard at 47 C.F.R. § 1.1166, "good cause shown and the public interest will be served,"⁵⁶ Licensee fails to establish how the public is served by either deferral of payment of the fee or the waiver of the fee. Licensee's only other *mention* of the requirement is to conclude "[g]iven the likelihood of success of this petition, combined with the financial hardship that imposition of the regulatory fees would impose, the public interest would be served by granting the deferral." This summary misses the mark by failing to show how the public interest is served by deferring, and it is devoid of even mentioning how the public interest is served in granting a waiver. With no showing on this prong, we deny both the petition to defer payment and the request to waive the fee.

⁵³ Declaration at 2.

⁵⁴ Request at 2-3.

⁵⁵ 47 C.F.R. § 1.65 ("Each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application ... whenever the information furnished ... is no longer substantially accurate and complete in all significant respects, the applicant shall as promptly as possible and in any event within 30 days, unless good cause is shown, amend or request the amendment of the application so as to furnish such additional or corrected information as may be appropriate."); *Bartholdi Cable Co. Inc. v FCC*, 114 F3d 274, 280 (DC Cir. 1997)(The Commission "'need not sift pleadings and documents' to identify arguments that are not 'stated with clarity' by a petitioner. It is the petitioner that has the burden of clarifying its petition before the agency.").

⁵⁶ Request at 1.

We also note, when the Commission announced that evidence of bankruptcy or receivership is sufficient to establish financial hardship,⁵⁷ it referred to the situation where the party was proceeding in a straight bankruptcy liquidation case. A party filing under Chapter 11 is not a *bankrupt*.⁵⁸ Moreover, in 2003, the Commission emphasized the applicant's duty to show that the bankruptcy proceeding represents extraordinary and compelling circumstances justifying a waiver when balanced against the public interest in reimbursing the Commission for its costs as reflected in the statutory fee provisions.⁵⁹ Accordingly, we deny Licensee's Request.

Licensee requested confidential treatment of the submitted financial data. Under 47 C.F.R. §§ 0.442(d)(1) and 0.459(d)(3), we do not routinely rule on requests for confidential treatment until we receive a request for access to the records; however, in the meantime, we treat the records confidentially.

Payment of \$21,945.00, Licensee's FY 2012 regulatory fees, is now due, and that amount must be received, together with a Form 159, within 30 days of the date of this letter. If Licensee's full payment of that amount is not received by that date, any unpaid portion of the debt is delinquent as of the date of this letter, and on such amount, we will assess the statutory penalty of 25% of the unpaid fee,⁶⁰ and assess interest and applicable additional penalties and charges required by 31 U.S.C. § 3717(e) that will accrue from the date of this letter.

⁵⁷ FY 1994 MO&O, 10 FCC Rcd at 12761, ¶ 14.

⁵⁸ *Matter of Phillips*, 966 F.2d 926, 930 (5th Cir. 1992), rehearing denied (1992),

Congress consolidated federal bankruptcy law in the Bankruptcy Act of 1898. See Act of July 1, 1898, c. 541, 30 Stat. 544. At that time, bankruptcy law only facilitated liquidation. Not until 1933 did Congress amend the Bankruptcy Act to permit reorganization of certain entities. See Pub.L. No. 72-420, 47 Stat. 1474 (1933). In 1938, Congress amended the Bankruptcy Act with the precursor to Chapter 11 to facilitate general corporate reorganization. See Act of June 22, 1938, Pub.L. No. 74-575, 52 Stat. 840 (1938). Until Congress substantially revised the Bankruptcy Act with the Bankruptcy Reform Act of 1978, the Bankruptcy Act apparently referred to entities undergoing Chapter 7 liquidation as "bankrupts," and those undergoing Chapter 11 reorganization as "debtors." See S. REP. No. 989, 95th Cong., 2d Sess. 23 (1978), reprinted in Historical and Revision Notes following 11 U.S.C.A. § 101(12) at 36 (1979), and reprinted in 1978 U.S.C.C.A.N. 5787, 5809. But the Bankruptcy Reform Act of 1978 removed all references to "bankrupt" in federal bankruptcy law, created the Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, and adopted "debtor" to refer to all who seek protection under the Code, whether they do so through liquidation under Chapter 7 or reorganization under Chapter 11. See 11 U.S.C. § 101 (12); see generally H.R. REP. No. 595, 95th Cong., 2d Sess. 3-5 (1978), reprinted in 1978 U.S.C.C.A.N. 5963, 5965-66 (recounting Reform Act's history and purpose).

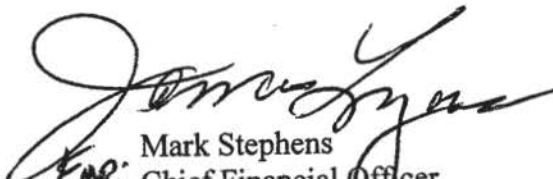
⁵⁹ 18 FCC Rcd at 6090, ¶ 11.

⁶⁰ 47 U.S.C. § 159(c)(1). See 9 FCC Rcd at 5346, ¶ 35 ("the petitioner will have 30 days to [pay the fee] in order to avoid the assessment of penalty charges and the invocation of any other available remedy. The filing of a petition for reconsideration will not toll this 30-day period.").

Jonathan E. Allen, Esq.

Furthermore, under the law,⁶¹ the Commission will initiate collection proceedings. If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,


Mark Stephens
for: Chief Financial Officer

⁶¹ See 47 C.F.R. § 1.1901, *et seq.*